

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Closed Captioning of Video)	
Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf, Inc.)	
Petition for Rulemaking)	

To: Secretary, Federal Communications Commission

REPLY COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company, ESPN (80% owned by Disney),¹ Disney ABC Cable Networks Group (including The Disney Channel, ABC Family, Toon Disney and SOAPnet), The ABC Television Network and the ABC Owned Television Stations (hereinafter collectively referred to as “Disney”) hereby submit reply comments in the above-captioned proceeding (“Reply Comments”), in which the Federal Communications Commission (“FCC” or “Commission”) is considering modification of its closed captioning rules.² In these Reply Comments, Disney generally supports many of the initial comments made by video programming trade associations and industry participants. Disney also draws upon its own specific experiences as a broadcast and cable programming provider to highlight how

¹ The remaining 20% is owned by The Hearst Corporation.

² See Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking, *Notice of Proposed Rulemaking*, CG Docket No. 05-231, FCC 05-142 (rel. July 21, 2005) (“*NPRM*”).

certain proposed rule changes are premature, unnecessary and/or would result in unreasonable burdens and public interest harms.

I. INTRODUCTION

As an initial matter, Disney stresses that it takes its responsibilities to close caption its programming very seriously. All Disney entities—from the ABC Network and the ABC Owned Television Stations to ESPN and The Disney Channel—take great care to ensure that our programming is captioned consistently with the Commission’s rules and with the standards our loyal viewers expect.³ Disney also is working hard to ensure compliance with the 100% benchmark effective January 1, 2006. Moreover, apart from any regulatory requirement, Disney is committed to serving all of its viewers with the most up-to-date news and information, as well as the highest-quality entertainment programming. Nonetheless, based on its own experience as a broadcaster and cable network owner, Disney believes that many of the Commission’s proposed changes to its closed captioning rules are not needed and would create unreasonable burdens on entities like Disney that are working extremely hard to satisfy their current closed captioning obligations while simultaneously providing important and highly-valued programming such as local news and sports.

³ For example, ABC’s closed captioning RFP’s are done on behalf of all the Disney programming entities (ABC, ESPN, ABC Cable Networks Groups) and they solicit proposals for a greater than 98% accuracy rate; in reality, ABC’s chosen vendors usually are able to deliver a 99% or better accuracy rate. Further, the network does not differentiate between the quality of live and taped programming. Overall, ABC always has insisted on the highest quality captioning and pays a premium for this quality.

II. ADOPTION OF ADDITIONAL RULES WOULD BE PREMATURE AND UNNECESSARY AND COULD HARM THE PUBLIC INTEREST

Disney generally supports the comments of the National Association of Broadcasters (“NAB”), the National Cable & Telecommunications Association (“NCTA”) and the Motion Picture Association of America (“MPAA”), as well as individual broadcasters and cable entities.⁴ Disney, like these other entities, remains committed to providing high-quality and accurate captioning of its broadcast and cable programming, to the best of its ability. However, Disney agrees with these parties that additional closed captioning rules would be premature and unnecessary and, in some cases, could harm rather than promote the public interest. Details concerning these positions are provided below, along with support from Disney’s own experiences as a broadcast and cable programming provider.

A. Adoption of Additional Rules Would be Premature and Unnecessary

Adoption of additional rules at this time would be premature given the Commission’s rapidly approaching mandates. As the Commission is aware, entities generally must ensure that 100% of their new, non-exempt programming is captioned as of January 1, 2006.⁵ Another mandate requires that 75% of “pre-rule” programming be captioned during the first quarter of 2008.⁶ Other rules become

⁴ The comments of the NAB (“NAB Comments”), NCTA (“NCTA Comments”) and MPAA (“MPAA Comments”) are incorporated by reference herein.

⁵ *See* 47 C.F.R. §§ 79.1.

⁶ 47 C.F.R. § 79.1(b)(2). Pre-rule programming is defined to include programs first shown before January 1, 1998. 47 C.F.R. § 79.1(a)(6).

effective as of 2010 and 2012.⁷ Programming providers are working diligently to ensure their compliance with these upcoming deadlines, especially the 100% deadline, which applies for the first time in a matter of days. Despite their thorough efforts, programmers cannot completely predict potential problems they may face as they attempt to comply with these mandates. Thus, it would be inadvisable for the Commission to impose additional rules on programming providers at the same time that they are attempting to comply with new rules presently in place. Disney also is acutely aware that the captioning services themselves are struggling to meet the demands of the January 1, 2006 date. Imposing additional burdens on the captioning providers at this time would only set the captioning service (and the regulated entities) up for failure. Ultimately, Disney agrees with the MPAA, who stated that: “[I]t would be premature to impose specific quality standards at a time when the video programming industry is striving to meet rapidly approaching quantitative requirements.”⁸

The Commission also should refrain from imposing further burdens on programming providers because there is no verified need for additional rules. Although the Commission in its *NPRM* appears to assume that there is a need for tougher standards, the facts do not demonstrate such a need. The Disney media entities—ABC, the ABC Owned Television Stations, and Disney’s many 24/7 cable programming networks—provide thousands of hours of captioned programming and have received virtually *no complaints from viewers*. Disney’s complaint experience

⁷ See 47 C.F.R. § 79.1(b)(3)(iv). 47 C.F.R. § 79.1(b)(4)(ii).

⁸ MPAA Comments, at ii.

is consistent with other cable entities and broadcasters, as well as the Commission's own records.⁹ As the NAB stated, the record before the Commission "does not evidence a widespread failure to deliver high quality captioning that would warrant a change."¹⁰ Absent such a showing of failure, it is unnecessary for the Commission to adopt additional closed captioning requirements at this time.¹¹

⁹ See NCTA Comments (noting no evidence of "widespread non-compliance that might warrant adoption of extraordinary fines"); NCTA Comments, at 5 (citing Commission data to show that the "FCC's own records show that the agency has had only a handful of complaints in the captioning area").

¹⁰ NAB Comments, at 11-12. Disney also agrees with the MPAA that additional rules are unnecessary due to market incentives. See MPAA Comments, at 3-4 (remarking that the "growing demand for closed captioning already provides a strong market incentive to the video programming industry to provide consistent, comprehensive and high-quality captioning").

¹¹ For example, the NPRM raises a lot enforcement issues that, in Disney's view, are unnecessary to adopt at this time given that the 100% benchmark is set to go into effect on January 1, 2006. Moreover, to the extent that viewers have said that filing complaints has been difficult because the requirements are based on percentages of programming, when the 100% benchmark kicks in on January 1, presumably viewers will already have an easier time filing complaints if needed. Given this upcoming development, there is no reason to modify the requirements at this time. If anything, the Commission should consider a *de minimis* exception, especially for live programming, in light of the new 100% benchmark.

B. Non-Technical Quality Standards Would be Impractical and Could Discourage Local Programming

Among other changes, the Commission is considering imposing non-technical quality standards on captioning that would address matters such as spelling, grammar, and punctuation.¹² The Commission previously considered and rejected such rules because of the difficulty in establishing fair standards, associated administrative burdens, and the adequacy of marketplace incentives.¹³

Nothing has changed since that time that would warrant the adoption of non-technical quality standards. Further, implementation of such standards would be impractical given the inherent human error element in captioning. As the NAB has stated, “human error precludes perfect captions” and human error cannot be reduced through rulemaking.¹⁴ Moreover, even if perfection was theoretically possible, it is not clear what type of captioning would be considered “perfect” because, as MPAA states, most video programming involves dialogue or everyday speech, which includes slang, incomplete sentences and grammatical errors.¹⁵ Finally, quality standards are unnecessary because programmers already are using multiple methods to ensure the quality of their captioning.¹⁶

¹² *NPRM* at ¶¶ 10-16.

¹³ *See* NAB Comments, at 10-11.

¹⁴ *See* NAB Comments, at 3, 12.

¹⁵ *See* MPAA Comments at 6-7. Adoption of strict quality standards also could discourage attempts to enrich the captioning experience. *Id.* For example, some programmers currently include special elements in their captioning, such as notations of when music is playing or when a noise originates off-screen. If strict quality standards are imposed, programmers may eliminate these special elements in their captioning rather than risk accusations of inaccuracy.

¹⁶ *See* NCTA Comments, at 3.

The example of the ESPN networks, which have a relatively unique set of challenges when it comes to closed captioning, illustrates all of the above points. The ESPN networks consist of ESPN, ESPN2, ESPNEWS, ESPNU, ESPN Deportes, ESPN HD and ESPN2 HD. All of these cable networks air predominantly live sports, sports talk, or short-turnaround programming (*e.g.*, studio programming taped shortly in advance of broadcast). ESPN hires outside captioning services (of which there are a limited number) to close caption its programming and these captioning services work very hard to accurately caption ESPN programming. However, applying an accuracy standard across these networks, on a 24/7 basis for live programming, would be counterproductive and would only add additional monitoring costs—not to mention fines for an occasional error—to no possible end because the captioners are doing the best they can to prevent human error (which is inevitable). A related proposal to replace live captioning with captions done off-line when programming is re-aired is similarly flawed. Again, this type of proposal would only impose additional inordinate costs on programming that has limited repeat value (*e.g.*, each episode of SportsCenter may be repeated or time-shifted several times in one day, but after that, the programming has no repeat value).¹⁷ Based on the experiences of ESPN and its other networks, Disney submits that non-technical quality standards would be impractical as well as unnecessary.¹⁸

¹⁷ Similarly, any requirement to otherwise correct captioning errors made in live programming before it is repeated would be practically impossible and involve astronomical costs.

¹⁸ One way used by ESPN to ensure accurate captioning is to monitor and compare the quality of multiple captioning services. Specifically, ESPN continually reviews the performance of the captioning services it uses. As a result, ESPN has demanded

The imposition and enforcement of non-technical quality standards also could discourage the airing of local programming by well-intentioned broadcasters. As the NAB states: “Faced with the task of delivering ‘perfect’ captioning or risk significant forfeitures, local stations may err on the side of caution and refrain from airing live, local programming, including breaking news and emergency weather information.”¹⁹ Disney’s experience with the ABC Owned Television Stations provides a useful context for understanding these and other reasons not to adopt non-technical quality standards.

The ten ABC Owned Television Stations are committed to providing live news to their viewers—including scheduled news, breaking news, and emergency information—and are committed to providing this news closed captioned. In order to achieve these goals, many of the ABC Owned Television Stations must rely on outside services to caption their news programs and deliver the captioning to the studio via phone lines. The demands of captioning live local news are the most difficult for the captioning services to satisfy because there is a shortage of capable captioners and, most acutely, a shortage of capable captioners available at that very minute to do live news (as opposed to tape programming, which the captioners can caption on their own schedule). In addition, because of this delivery system, there may be times that the captioning lags a bit behind the live audio; however, such lags are exceedingly difficult to avoid, given the inherent delay in creating,

improvements from certain providers and even stopped using one captioning service because of quality issues.

¹⁹ NAB Comments, at 12.

transmitting, and decoding the captions. Given these and other realities, some errors are inevitable and simply are not under the control of the stations. If the Commission adopted non-technical quality standards, the ABC Owned Television Stations could face having to delay a live news program, which would create an entirely different set of technical and production challenges. Ultimately, the ABC Owned Television Stations strongly believe that providing live, non-delayed news is in the public interest. The Commission should not place stations in the position of having to delay news.²⁰

Imposing non-technical quality standards also is inappropriate in light of stations' demonstrated commitment to providing high-quality captioned programming.²¹ For example, the ABC Owned Television Stations are committed to providing all their viewers with the most accurate emergency and breaking news, and work very hard to ensure that all viewers have the most up-to-date information. In cases of emergency, every effort is made to ensure that emergency information is provided via on-screen text or via closed captioning. Adding additional regulatory burdens would only impose additional work and costs, and would not benefit viewers given the stations' commitment to disseminating

²⁰ At the current time, the electronic newsroom technique ("ENR") provides a reliable level of service in most circumstances in markets outside the top-25. The costs of providing live captioning are the same regardless of whether the station is in a large or a small market and therefore the costs of providing live captioning fall disproportionately on smaller market stations. While technology will ultimately provide a solution for the captioning of live news in smaller markets (e.g., when voice recognition technology advances), it is not a reasonably reliable solution today.

²¹ The ABC network shares this commitment through constant monitoring of its outgoing captioning, supervision of captioning by a network associate director, and requiring vendors to provide monitoring of captioning at their own facilities.

emergency and other news information as quickly and as comprehensively as possible. Given this demonstrated commitment, no further regulation is needed.

III. CONCLUSION

All Disney programming entities are committed to providing their viewers with accurate captioning of their high-quality programming. Disney believes that the Commission's current rules are adequate to ensure that all programmers share this commitment. Accordingly, for the reasons set forth in these Reply Comments and in the comments referenced herein, the Commission should refrain from adopting further closed captioning regulations at this time.

Respectfully submitted,

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